IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

JUDGMENT

Budha Ram & ors. Vs. National Insurance Co.Ltd. & ors.

S.B.CIVIL MISC. APPEAL NO.355/1994

Against the award dated 11.02.1994 made by the Motor Accidents Claims Tribunal, Churu in Claim Case No134/1992.

Date of Judgment : 3rd October 2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.Manoj Bohra for the appellants

Mr. Anil Bachhawat) for the respondents
Mr. Pradeep Choudhary)

BY THE COURT:

This is claimants' appeal seeking enhancement over the amount of compensation awarded by the Motor Accidents Claims Tribunal, Churu in the sum of Rs.73,000/- in its award dated 11.02.1994 made in Claim Case No.134/1992 on account of accidental death of Lalchand, 16 years in age, son of appellant Nos.1 and 2 and brother of appellant Nos.3 to 7. Only quantum of compensation being the subject matter of this appeal, brief reference to the background facts would suffice.

On 15.07.1992 at about 9.00 a.m. the deceased riding his bicycle near Bisau Road, Railway Gate No.165C was hit by the offending truck bearing registration No.RRF 93; the deceased was crushed beneath the wheels of the truck; sustained grievous injuries and succumbed. The present claimants being the parents of the deceased respectively in 50 and 45 years of age; and brothers-sister of the deceased between 12 to 4 years of age, averred in the claim application that deceased was a student of 8th standard and was the eldest child of the parents; and apart from putting himself into studies he was also earning as a labourer and was contributing Rs.5,000/- per annum to the family. The claimants submitted that deceased was likely to get himself engaged in a reasonable job and would have earned up to the age of 80 years and, in all claimed Rs.15,41,000/- as compensation. The claim application was contested by the respondent-insurer of the offending truck while generally denying the claim averments and raising other objections for the purpose of its exoneration. The Tribunal framed following issues for determination of the questions involved in the case:-

> "1- क्या दिनांक 15-7-92 को सुबह करीब 9 बजे अप्रार्थी भागीरथ के ट्रक RRF 93 को लापरवाही , तेजी व गफलत से चलाकर लालचन्द के टक्कर मारी जिससे उसके गम्भीर चोटे

आई और उनके कारण उसकी मृत्यु हो गई ।

....प्रार्थीगण

2- क्या प्रार्थीगण मृतक लालचन्द के उत्तराधिकारी एवं आश्रित होने के कारण अप्रार्थीगण से मुआवजा आवेदन पत्र के मद दस में उल्लेखितानुसार 15,41,000/- रूपये प्रतिकर स्वरूप पाने के अधिकारी हैं।

....प्रार्थीगण

3- क्या लालचन्द का एक्सीडेन्ट वाहन RRF 93 से नहीं हुआ इस कारण अप्रार्थीगण दो, तीन व चार प्रतिकर के लिए उत्तरदायी नहीं है।

....अप्रार्थी 2, 3, 4

4- क्या ट्रक RRF 93 का बीमा भंवरलाल पुत्र लालूराम निवासी पीथासर के नाम था तथा दुर्घटना के समय वाहन उसके स्वामित्व में निहित नहीं था इस कारण बीमा कम्पनी के विरूद्ध मुआवजा याचिका नहीं चल सकती है।

....अप्रार्थी 1

5- क्या अप्रार्थी एक के विरूद्ध क्लेम याचिका उसके जवाब के विशेष विवरण की मद 2, 3 व 4 में उठाये आक्षेपों के अनुसार चलने योग्य नहीं है।

....अप्रार्थी-1

6- क्या बीमा कम्पनी मोटरयान अधिनियम की धारा 147,149 व 170 के सुरक्षा प्रावधानों को अंगीकार का अधिकार रखती है।

. ...अप्रार्थी -1

7- अनुतोष ।"

After taking evidence, the Tribunal proceeded to decide in issue Nos.1 and 3 that the accident leading to death of Lalchand was caused by the truck in question. The Tribunal also decided issue Nos.4, 5 and 6 against the insurer holding it liable to satisfy the award. Findings on issue Nos.1, 3,4,5 and 6 need no further dilatation as only the question of quantum of compensation is involved in this appeal.

While taking up quantification of compensation in issue

No.2, the Tribunal considered that though the claimants alleged the income of the deceased at Rs.5,000/- per annum in the claim application but they proceeded to assert exorbitant figures towards his income where Budha Ram AW-1, father of the deceased, stated his income at Rs.5,000-Rs.6,000/- per month whereas the mother of deceased, Mst. Sona AW-2 stated his income to the extent of Rs.8,000/- per month. The Tribunal considered it proper to estimate the annual income of the deceased at Rs.5,000/- and contribution to the claimants at Rs.3,000/- per annum; but thereafter applied the multiplier of 16 to a multiplicand of Rs. 3,500/- and assessed pecuniary loss to the tune of Rs.56,000/-. The Tribunal further allowed Rs.14,000/- towards non-pecuniary loss and Rs.3,000/- towards funeral expenses and in this manner held the claimant entitled for compensation in the sum of Rs.73,000/-. After deducting the amount of Rs. 25,000/-already paid under no fault liability, the Tribunal allowed interest at the rate of 12% per annum on the remaining compensation amount of Rs.48,000/- from the date of filing of claim application i.e.29.07.1992.

Assailing the compensation awarded by the Tribunal, learned counsel for the claimants has strenuously contended that merely because a figure of Rs.5,000/- per annum was

stated in the claim application, the Tribunal was not justified in adopting that figure alone and the Tribunal has failed to consider that deceased was the eldest child of his parents and in view of family set up, a reasonable component of his earnings and contribution, present and future, could not have been denied. Learned counsel further submitted in the alternative that even if the deceased be taken to be a non-earning person studying in 8th standard, going by the principles available from the Second Schedule of the Motor Vehicles Act even if notional income in the range of Rs.15,000/- per annum be accepted for the deceased; and the average loss is assessed on that basis by application of appropriate multiplier, apparently, the award as made by the Tribunal by assessing pecuniary loss only at Rs.56,000/- remains grossly inadequate, insufficient and too low. Learned counsel appearing for the respondent-insurer has duly supported the impugned award with reference to the pleadings taken by the claimants and submitted that in view of the fact that deceased was an unmarried person and not the lone child of parents, in the ultimate analysis the award made by the Tribunal cannot be said to be grossly inadequate so as to warrant interference in appeal. Learned counsel pointed out that the Tribunal has awarded comparatively higher rate of interest at 12% per

annum and on an overall view, the ultimate award needs no modification.

Having given a thoughtful consideration to the rival submissions and having scanned through the entire record, this Court is satisfied that the award on its quantification of compensation remains grossly inadequate and too low and the same deserves modification by upward revision.

It is true that the claimants have averred in the claim application that deceased was contributing about Rs.5,000/- per annum to the family by getting himself engaged in the labour work but at the same time it has also been stated in the claim application that he was a student of 8th standard and was maintaining a reasonable academic career and was likely to get engaged in a reasonable employment and would have contributed better to the family. In a vehicular accident case, the rules relating to the pleadings as well as evidence cannot be put at hyper technical pedestal particularly so as to confine the claimants to the claim averments to their detriment. The Tribunal has proceeded to adopt the figures stated in the claim application and then has assumed contribution of the deceased at Rs.3,000/- per annum and then has proceeded to apply multiplier of 16 to a multiplicand of Rs, 3,500/- to arrived at a figure of Rs.56,000/- towards pecuniary loss. The assessment, obviously, is wanting in correct application of

appropriate principles.

From the facts established on record and the circumstances surrounding them, it is noticed that the deceased was 16 years of age and was the eldest child of the parents. Even if he were treated to be a non-earning person at the time of his demise, his having potential to earn better and to contribute substantially to the claimants cannot be ignored. Even if notional income of the deceased is taken in the range of Rs.15,000/- per annum, in the circumstances of this case, it appears appropriate to assess the loss of contribution at Rs.10,000/- per annum after deducting only one-third on his personal expenditure. Although deceased was an unmarried person and likelihood of diversion of major part of his income to his own family in future cannot be ruled out, however, at the same time the fact remains that deceased was eldest son of the parents and the family comprised of eight persons including five of younger brothers and sister of the deceased. When only notional income figure is being taken, in the overall facts and circumstances of the case and the family set up, it appears appropriate that a contribution factor at Rs.10,000/- per annum be adopted in this case and in view of the age of mother of the deceased at 45 years, multiplier of 15 be applied to assess pecuniary loss at Rs.1,50,000/-. The assessment of pecuniary loss by the Tribunal merely at Rs.

56,000/- even for the incident of the year 1992 cannot be held justified.

The Tribunal has awarded a sum of Rs.14,000/- towards non-pecuniary loss by allowing Rs.2,000/- to each of the seven claimants. In the circumstances of the case and with substantial enhancement being made towards pecuniary loss, it appears appropriate not to make any enhancement in this figure of Rs.14,000/- towards non-pecuniary loss. The Tribunal has awarded Rs. 3,000/- towards funeral expenses; and in the circumstances of the case, the same is retained. The loss for the claimants, therefore, stands in the sum of Rs.1,67,000/- (Rs.1,50,000/- + Rs.14,000/- + Rs.3,000) as against the amount of Rs.73,000/- allowed by the Tribunal. The claimants shall, therefore, be entitled for a further amount of Rs.94,000/-.

Having regard to the circumstances of the case and substantial enhancement being made herein, it appears appropriate to allow interest at the rate of 6% per annum to the claimants on the enhanced amount of Rs.94,000/- from the date of filing of claim application.

In the result, this appeal succeeds and is partly allowed. The impugned award on its quantification of compensation is modified and the claimants are allowed compensation in the sum of Rs.1,67,000/- in place of the amount of Rs.73,000/-

as allowed by the Tribunal. The claimants shall, therefore, be entitled for further amount of Rs.94,000/-; and on this enhanced amount shall be entitled to interest at the rate of 6% per annum from the date of filing of claim application.

The amount now payable under the modified award shall be deposited by the respondent-insurer within 30 days from today with the Tribunal; and the Tribunal shall proceed with apportionment and disbursement in the manner and proportion as contemplated by the impugned award. The parties shall bear their own costs of this appeal.

(DINESH MAHESHWARI),J.

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